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Ohio News | Article published Thursday, November 20, 2003

LAKE ERIE

Property lines at issue in shoreline bill

By [JAMES DREW](#)

BLADE COLUMBUS BUREAU CHIEF

COLUMBUS - Conservationists and residents who live along Lake Erie clashed yesterday over a bill that tries to redefine the line between private property and a doctrine that allows citizens to enjoy Lake Erie's shore.

Charles Herdendorf, an emeritus professor of geological sciences at Ohio State University, said it is a myth that the state since 1803 has owned the land from the Canadian boundary to the lake's ordinary high-water mark. It is a surveying point set by the U.S. Army Corps of Engineers, he added.

He said that when he worked for the state Department of Natural Resources from 1960 to 1971, the state used the low-water mark as the line between state property and private property owners.

"Today, ODNR is now asserting ownership over private property," Dr. Herdendorf told the House Energy and Environment Committee. "Clearly, this is an attempt to expropriate land," he said.

Dr. Herdendorf said the Army Corps of Engineers uses the ordinary high-water mark as a jurisdiction boundary, not as a property boundary.

But Jack Shaner, public-affairs coordinator for the Ohio Environmental Council, said the bill would give away thousands of acres of prime lakefront real estate and block access to Lake Erie.

The bill sponsored by state Rep. Tim Grendell (R., Chesterland) would define the property line of lakefront property owners as what the deed says, or the ordinary low-water mark.

The elevation of the high-water mark is 573.4 feet. State officials say Mr. Grendell's bill would set the ordinary low-water mark at 571.3 feet, from the current 568.1.

Mr. Shaner said water levels now are 32 inches below the ordinary high-water mark.

He referred to the bill as a "reverse takings, taking lands held in trust for all of the people of Ohio since Ohio became a state in 1803 and giving them to upland property owners, the vast majority of which are private commercial and residential landowners."

The state is estimating that 8,000 acres would be affected if the bill becomes law, said Jim Lynch, a spokesman for the state Department of Natural Resources.

The public trust doctrine allows the state to regulate the Lake Erie waters from the

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boundary with Canada to the point where the high-water mark intersects the natural shoreline. It also allows the public to use that area for fishing, swimming, boating, and walking alone the shore.

Mr. Shaner said the public cannot move across private upland property to access public trust areas, but citizens can walk along the beach or wade in the surf as long as they are lakeward of the ordinary high-water mark.

"If the General Assembly attempts to push the public trust lands down from the ordinary high-water mark, it will literally push the public's access to the coast off shore and out." Mr. Shaner said.

Mr. Grendell's bill also would eliminate a program in which the state leases back often-submerged property from residential property owners along Lake Erie. Instead, property owners would be required to pay a one-time fee for a permit to erect erosion-control walls or replace docks below the ordinary high-water mark.

Sam Speck, director of the state Department of Natural Resources, has told the committee chairman, state Rep. Nancy Hollister (R., Marietta) that the agency opposes the bill.

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